

Master Guarantee Agreement No.: \_\_\_\_ -MGA-99-\_\_\_\_

**EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM**

**MASTER GUARANTEE AGREEMENT**

THIS MASTER GUARANTEE AGREEMENT (this "Agreement") is made and entered into by and between the institution identified as Lender on the signature page hereof ("Lender") and the Export-Import Bank of the United States ("Ex-Im Bank"). This Agreement includes the general terms and conditions set forth below (including defined terms identified by initial capitals) and the specific terms and conditions set forth in each Loan Authorization Agreement and, to the extent applicable, in the Delegated Authority Letter Agreement, all of which together comprise the complete agreement of the parties with respect to Ex-Im Bank's guarantee of Disbursements made with respect to a Loan Facility.

**RECITALS**

Lender may from time to time establish Loan Facilities in favor of certain entities engaged in manufacturing, producing or purchasing and selling goods or services of United States manufacture or origin for export for the purpose of providing pre-export working capital to finance the manufacture, production or purchase and subsequent export sale of Items.

It is a condition to the establishment of such Loan Facilities that Ex-Im Bank guarantee the payment of ninety percent (90%) of the Guaranteed Amount, subject to the terms and conditions of this Agreement, the Loan Authorization Agreement and, to the extent applicable, the Delegated Authority Letter Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.01 Definitions of Terms. As used in this Agreement, including the Recitals to this Agreement and each Loan Authorization Agreement, the following terms shall have the following meanings:

"Accounts Receivable" shall mean, with respect to a Borrower, all of such Borrower's now owned or hereafter acquired (a) "accounts" (as such term is defined in the UCC), other receivables, book debts and other forms of obligations, whether arising out of goods sold or services rendered or from any other transaction; (b) rights in, to and under all purchase orders or receipts for goods or services; (c) rights to any good represented or purported to be represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin,

reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods); (d) moneys due or to become due to such Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by such Borrower (whether or not yet earned by performance on the part of such Borrower), including the proceeds of the foregoing; (e) any notes, drafts, letters of credit, insurance proceeds or other instruments, documents and writings evidencing or supporting the foregoing; and (f) all collateral security and guarantees of any kind given by any other Person with respect to any of the foregoing.

"Advance Rate" shall mean, with respect to a Loan Facility, the rate specified in Section 5(C) of the Loan Authorization Agreement for each category of Primary Collateral.

"Annual Facility Fee Percentage" shall mean one and one-half percent (1.50%), subject to reduction as set forth in Section 3.01(b).

"Assignment Agreement" shall mean an assignment agreement executed by Lender in favor of Ex-Im Bank in form and substance satisfactory to Ex-Im Bank.

"Borrower" shall mean each Eligible Person specified in each Loan Authorization Agreement as a Borrower and each permitted successor and assign of such Borrower.

"Borrower Agreement" shall mean with respect to a Loan Facility, the agreement executed by a Borrower in the form of Annex B.

"Business Day" shall mean any day on which the Federal Reserve Bank of New York is open for business.

"Buyer" shall mean a Person that has entered into one or more Export Orders with a Borrower.

"Claim" shall mean a written demand on Ex-Im Bank by Lender for payment under the Guarantee in accordance with the terms of this Agreement.

"Claim Conditions" shall have the meaning set forth in Section 5.01.

"Claim Date" shall mean the Business Day on which Lender has delivered to Ex-Im Bank each of the Claim Conditions with respect to a Claim.

"Claim Disposition Notice" shall have the meaning set forth in Section 5.03(a).

"Claim Payment" shall mean a payment made by Ex-Im Bank with respect to a Claim or a portion thereof.

"Claim Payment Date" shall mean the date on which Ex-Im Bank makes a Claim Payment.

"Collateral" shall mean all property and interest in property in or upon which Lender has been granted a Lien as security for the payment of all Loan Facility Obligations

including the Primary Collateral, the Secondary Collateral and the Guarantor Collateral, and all products and proceeds (cash and noncash) thereof.

"Collateral Protection Costs" shall mean, with respect to a Loan Facility, all reasonable out-of-pocket costs and expenses incurred by Lender or Ex-Im Bank after the occurrence of an Event of Default in connection with the protection of the Primary Collateral, such as the costs of storage, insurance and security guards. For the purpose of computing Collateral Protection Costs with respect to a Loan Facility for which the Export-Related Inventory of a Borrower cannot be effectively segregated from the other Inventory of such Borrower, the amount of Collateral Protection Costs relating to such Inventory shall be determined on a Pro Rata Inventory Basis.

"Commercial Letters of Credit" shall mean those letters of credit subject to the UCP payable in Dollars and issued or caused to be issued by Lender on behalf of a Borrower under a Loan Facility for the benefit of a supplier(s) of such Borrower in connection with such Borrower's purchase of goods or services from the supplier in support of the export of the Items.

"Costs Maximum Amount" shall mean the lesser of (a) the sum of the actual Collateral Protection Costs and Enforcement Costs incurred by Lender for which Lender has not been reimbursed by a Borrower, any Guarantor or any other Person or from the proceeds of Collateral; (b) five percent (5%) of the outstanding principal balance of the Loan Facility on the Claim Date; or (c) \$50,000.

"Country Limitation Schedule" shall mean the schedule published from time to time by Ex-Im Bank setting forth on a country by country basis whether and under what conditions Ex-Im Bank will provide coverage for the financing of export transactions to the countries listed therein. Such Country Limitation Schedule in effect on the date of each Loan Authorization Agreement shall be attached to the Loan Authorization Agreement and such updates thereof shall be sent to Lender by United States Mail with proper postage prepaid or by telecopier or other facsimile transmission to the parties at the address or facsimile number designated in accordance with Section 6.02.

"Credit Accommodation Amount" shall mean, with respect to a Loan Facility, the sum of (a) the aggregate outstanding amount of Disbursements and (b) the aggregate outstanding face amount of Letter of Credit Obligations.

"Credit Accommodations" shall mean, collectively, Disbursements and Letter of Credit Obligations.

"Criteria For Reduced Facility Fee" shall have the meaning set forth in Section 3.01(b).

"Delegated Authority Letter Agreement" shall mean the Delegated Authority Letter Agreement, if any, between Ex-Im Bank and Lender.

"Disbursement" shall mean, collectively, (a) an advance of a working capital loan from Lender to a Borrower under the Loan Facility, and (b) an advance to fund a drawing under a Letter of Credit issued or caused to be issued by Lender for the account of a Borrower under the Loan Facility.

"Dollars" or "\$" shall mean the lawful currency of the United States.

"Effective Date" shall mean, with respect to a Loan Facility, the date on which (a) the Loan Documents are executed by Lender and the applicable Borrower or the date, if later, on which agreements are executed by Lender and such Borrower adding the Loan Facility to an existing working capital loan arrangement between Lender and such Borrower and (b) all of the conditions to the making of the initial Credit Accommodations under the Loan Documents or any amendments thereto have been satisfied.

"Eligible Export-Related Accounts Receivable" shall mean, with respect to a Loan Facility, those Export-Related Accounts Receivables which are Eligible Export-Related Accounts Receivable as such term is defined in the applicable Borrower Agreement.

"Eligible Export-Related Inventory" shall mean, with respect to a Loan Facility, the Export-Related Inventory which is Eligible Export-Related Inventory as such term is defined in the applicable Borrower Agreement.

"Eligible Person" shall mean a sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which (a) is domiciled, organized or formed, as the case may be, in the United States; (b) is in good standing in the state of its formation or otherwise authorized to conduct business in the United States; (c) is not currently suspended or debarred from doing business with the United States government or any instrumentality, division, agency or department thereof; (d) exports or plans to export Items; (e) operates and has operated as a going concern for at least one (1) year; (f) has a positive tangible net worth determined in accordance with GAAP; and (g) has revenue generating operations relating to its core business activities for at least one year.

"Enforcement Costs" shall mean, with respect to a Loan Facility, all reasonable out-of-pocket costs and expenses, including reasonable attorney fees, incurred by Lender or Ex-Im Bank after the occurrence of an Event of Default in collecting any of the Loan Facility Obligations or in prosecuting any suit, litigation, arbitration or proceeding against a Borrower or any Guarantor with respect to the enforcement of all or part of the Loan Facility Obligations. For purposes of computing Enforcement Costs with respect to a Loan Facility, costs and expenses directly and exclusively relating to the Primary Collateral for such Loan Facility shall be included; costs and expenses directly and exclusively relating to another loan or credit facility shall be excluded; and costs and expenses directly relating to the Secondary Collateral, Guarantor Collateral or any Guarantor shall be included on a Pro Rata Basis.

"Event of Default" shall have the meaning set forth in Section 4.09.

"Export Order" shall mean a written export order or contract for the purchase by a Buyer from a Borrower of any of the Items.

"Export-Related Accounts Receivable" shall mean, with respect to a Borrower, those Accounts Receivable arising from the sale of Items which are due and payable to such Borrower in the United States.

"Export-Related Accounts Receivable Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Accounts Receivable of a Borrower less taxes, discounts, credits, allowances and Retainages, except to the extent otherwise permitted by Ex-Im Bank in writing.

"Export-Related Borrowing Base" shall mean, with respect to a Loan Facility, at the date of determination thereof, the sum of (a) the Export-Related Inventory Value multiplied by the Advance Rate applicable to Export-Related Inventory set forth in Section 5(C)(1) of the Loan Authorization Agreement, (b) the Export-Related Accounts Receivable Value multiplied by the Advance Rate applicable to Export-Related Accounts Receivable set forth in Section 5(C)(2) of the Loan Authorization Agreement, (c) if permitted by Ex-Im Bank in writing, the Retainage Value multiplied by the Retainage Advance Rate set forth in Section 5(C)(3) of the Loan Authorization Agreement and (d) the Other Assets Value multiplied by the Advance Rate applicable to Other Assets set forth in Section 5(C)(4) of the Loan Authorization Agreement.

"Export-Related Borrowing Base Certificate" shall mean a certificate in the form provided or approved by Lender, executed by a Borrower and delivered to Lender pursuant to the Loan Documents detailing the Export-Related Borrowing Base supporting the Credit Accommodations which reflects, to the extent included in the Export-Related Borrowing Base, Export-Related Accounts Receivable, Eligible Export-Related Accounts Receivable, Export Related Inventory and Eligible Export-Related Inventory balances that have been reconciled with such Borrower's general ledger, Accounts Receivable aging report and Inventory schedule.

"Export-Related General Intangibles" shall mean those General Intangibles necessary or desirable to or for the disposition of Export-Related Inventory.

"Export-Related Inventory" shall mean, with respect to a Borrower, the Inventory of such Borrower located in the United States that has been purchased, manufactured or otherwise acquired by such Borrower for resale pursuant to Export Orders.

"Export-Related Inventory Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the lower of cost or market value of Eligible Export-Related Inventory of a Borrower as determined in accordance with GAAP.

"Extension" shall mean, with respect to a Loan Facility, the agreement by Lender pursuant to its authority under the Delegated Authority Letter Agreement to extend the Loan Facility Term on the same terms and conditions as the Loan Facility for an aggregate period not to exceed one hundred and twenty (120) days beyond the Final Disbursement Date as originally stated in the Loan Authorization Agreement.

"Facility Fee" shall mean, with respect to a Loan Facility, the fee payable by Lender to Ex-Im Bank as calculated pursuant to Section 3.01(a) and more particularly described in the Facility Fee Schedule.

"Facility Fee Schedule" shall mean the schedule in the form attached to the Loan Authorization Agreement as Schedule A.

"Final Disbursement Date" shall mean, with respect to a Loan Facility, unless subject to an Extension, the last date on which Lender may make a Disbursement set forth in Section 10 of the Loan Authorization Agreement or, if such date is not a Business Day, the next succeeding Business Day; provided, however, to the extent that Lender has not received cash collateral or an indemnity with respect to Letter of Credit Obligations outstanding on the Final Disbursement Date, the Final Disbursement Date with respect to an advance to fund a drawing under a Letter of Credit shall be no later than thirty (30) days after the expiry date of the Letter of Credit related thereto.

"GAAP" shall mean the generally accepted accounting principles issued by the American Institute of Certified Public Accountants as in effect from time to time.

"General Intangibles" shall mean all intellectual property and other "general intangibles" (as such term is defined in the UCC) necessary or desirable to or for the disposition of Inventory.

"Guarantee" shall have the meaning set forth in Section 2.01.

"Guaranteed Amount" shall mean, with respect to a Loan Facility, the sum of (a) the outstanding principal balance of the Disbursements at the Claim Date, (b) the amount of Disbursements made after the Claim Date as respects Letter of Credit Obligations outstanding on the Claim Date, (c) all unpaid interest on the Disbursements described in (a) and (b) above at the Guaranteed Interest Rate accrued to the Claim Payment Date, and (d) the sum of the Collateral Protection Costs and Enforcements Costs incurred by Lender to the Claim Payment Date in an aggregate amount not to exceed the Costs Maximum Amount.

"Guaranteed Interest Rate" shall mean, with respect to a Loan Facility, a per annum rate equal to the interest rate set forth in the applicable Loan Documents with respect to a Disbursement earning interest at (a) a fixed rate or (b) a floating rate determined in accordance with the interest rate formula set forth in the applicable Loan Documents; provided, however, the Guaranteed Interest Rate shall not include any amount attributable to or based upon any post-default, post-maturity or post-demand increase in the interest rate.

"Guarantor" shall mean, with respect to a Loan Facility, each Person, if any, identified in Section 3 of the Loan Authorization Agreement who shall guarantee (jointly and severally if more than one) the payment and performance of all or a portion of the Loan Facility Obligations.

"Guarantor Collateral" shall mean, with respect to a Loan Facility, all assets of a Guarantor or other third party in which Lender is granted a Lien to secure any financial accommodations provided by Lender to Borrower.

"Guaranty Agreements" shall mean, with respect to a Loan Facility, a valid and enforceable agreement of guaranty executed by each Guarantor in favor of Lender.

"Intercreditor Agreement" shall mean a valid and enforceable written agreement among a Borrower, Lender and a creditor of such Borrower providing for the subordination of such creditor's Lien in the Collateral to the Lien in favor of Lender in the Collateral.

"Inventory" shall mean, with respect to a Borrower, all "inventory" (as such term is defined in the UCC) now or hereafter owned or acquired by such Borrower, wherever located, including all inventory, merchandise, goods and other personal property which are held by or on behalf of such Borrower for sale or lease or are furnished or are to be furnished under a contract of service or which constitute raw materials, work in process or materials used or consumed or to be used or consumed in such Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including other supplies.

"ISP" shall mean the International Standby Practices – ISP98, International Chamber of Commerce Publication No. 590 and any amendments and revisions thereof.

"Issuing Bank" shall mean the bank that issues a Letter of Credit which bank is Lender itself or a bank that Lender has caused to issue a Letter of Credit by way of guarantee.

"Items" shall mean, with respect to a Loan Facility, the finished goods or services which are intended for export from the United States, as specified in Section 4(A) of the Loan Authorization Agreement.

"Lender Obligations" shall mean all of Lender's obligations under this Agreement, the Loan Authorization Agreement, to the extent applicable, the Delegated Authority Letter Agreement and any other agreement between Ex-Im Bank and Lender.

"Letter of Credit" shall mean a Commercial Letter of Credit or a Standby Letter of Credit.

"Letter of Credit Obligations" shall mean all outstanding obligations incurred by Lender, whether direct or indirect, contingent or otherwise, due or not due, in connection with the issuance or guarantee by Lender or Issuing Bank of Letters of Credit.

"Lien" shall mean any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction) by which property is encumbered or otherwise charged.

"Loan Agreement" shall mean a valid and enforceable agreement between Lender and a Borrower setting forth the terms and conditions of each Loan Facility.

"Loan Authorization Agreement" shall mean, with respect to a Loan Facility, the Loan Authorization Agreement in the form of Annex A entered into between Lender and Ex-Im Bank or the Loan Authorization Notice setting forth certain terms and conditions of each Loan Facility.

"Loan Authorization Notice" shall mean the Loan Authorization Notice executed by Lender and delivered to Ex-Im Bank in accordance with the Delegated Authority Letter Agreement setting forth certain terms and conditions of each Loan Facility.

"Loan Documents" shall mean, with respect to a Loan Facility, the Loan Authorization Agreement, the Loan Agreement, the Borrower Agreement, each promissory note (if applicable), each Guaranty Agreement, and all other instruments, agreements and documents now or hereafter executed by the applicable Borrower or any Guarantor evidencing, securing, guaranteeing or otherwise relating to the Loan Facility or any Credit Accommodations made thereunder.

"Loan Facility" shall mean a Revolving Loan Facility, a Transaction Specific Loan Facility or a Transaction Specific Revolving Loan Facility established by Lender in favor of a Borrower under the Loan Documents.

"Loan Facility Anniversary Date" shall mean, with respect to a Loan Facility, each one (1) year anniversary of the Effective Date.

"Loan Facility Obligations" shall mean, with respect to a Loan Facility, all loans, advances, debts, expenses, fees, liabilities, and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by a Borrower to Lender, of any kind or nature, present or future, arising in connection with the Loan Facility.

"Loan Facility Term" shall mean, with respect to a Loan Facility, the number of months from the Effective Date to the Final Disbursement Date as originally set forth in the Loan Authorization Agreement.

"Material Adverse Effect" shall mean, with respect to a Loan Facility, a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of a Borrower or any Guarantor, (b) any Borrower's ability to pay or perform the Loan Facility Obligations in accordance with the terms thereof, (c) the Collateral or Lender's Liens on the Collateral or the priority of such Lien or (d) Lender's rights and remedies under the Loan Documents.



"Maximum Amount" shall mean the maximum principal balance of Credit Accommodations that may be outstanding at any time under each Loan Facility specified in Section 5(A) of the Loan Authorization Agreement.

"Other Assets " shall mean, with respect to a Borrower, the Collateral, if any, described in Section 5(C)(4) of the Loan Authorization Agreement.

"Other Assets Value" shall mean, with respect to a Borrower, at the date of determination thereof, the value of the Other Assets as determined in accordance with GAAP.

"Permitted Liens" shall mean, with respect to a Borrower, (a) Liens for taxes, assessments or other governmental charges or levies not delinquent, or, being contested in good faith and by appropriate proceedings and with respect to which proper reserves have been taken by such Borrower; provided, that, the Lien shall have no effect on the priority of the Liens in favor of Lender or the value of the assets in which Lender has such a Lien and a stay of enforcement of any such Lien shall be in effect; (b) deposits or pledges securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) deposits or pledges securing bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of such Borrower's business; (d) judgment Liens that have been stayed or bonded; (e) mechanics', workers', materialmen's or other like Liens arising in the ordinary course of Borrower's business with respect to obligations which are not due; (f) Liens placed upon fixed assets hereafter acquired to secure a portion of the purchase price thereof, provided, that, any such Lien shall not encumber any other property of Borrower; (g) security interests being terminated concurrently with the execution of the Loan Documents; (h) Liens in favor of Lender securing the Loan Facility Obligations; and (i) Liens disclosed in Section 6(D) of the Loan Authorization Agreement.

"Permitted Overadvances" shall mean Credit Accommodations to a Borrower in an amount which exceeds the Export-Related Borrowing Base of such Borrower, provided that (i) the aggregate amount of such Permitted Overadvances does not exceed five percent (5%) of the Maximum Amount; (ii) the aggregate amount of all Credit Accommodations including Permitted Overadvances does not exceed the Maximum Amount; and (iii) such Permitted Overadvances are not outstanding for more than ninety (90) consecutive days.

"Person" shall mean any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether national, federal, provincial, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person's successors and assigns.

"Primary Collateral" shall mean, with respect to a Loan Facility, the Collateral described in Section 6(A) of the Loan Authorization Agreement.

"Pro Rata Basis" shall mean, with respect to a Loan Facility, as of the date of determination thereof, the principal balance of the Credit Accommodations outstanding as a percentage of the combined principal balance of all loans from Lender to such Borrower including the then outstanding principal balance of the Credit Accommodations.

"Pro Rata Guaranty Basis" shall mean, with respect to a Loan Facility as of the Effective Date, the Maximum Amount as a percentage of the maximum amount of all loan facilities including the Loan Facility made available by Lender to Borrower.

"Pro Rata Inventory Basis" shall mean, with respect to a Loan Facility, as of the date of determination thereof, the principal balance of the Credit Accommodations that is supported by such Borrower's Export-Related Inventory as a percentage of the combined principal balance of all loans from Lender to such Borrower supported by such Borrower's Inventory including the then outstanding principal balance of the Credit Accommodations that is supported by such Borrower's Export-Related Inventory.

"Realization Costs" shall mean, with respect to a Loan Facility, the reasonable out-of-pocket costs and expenses incurred by Lender or Ex-Im Bank after the occurrence of an Event of Default in connection with sale or collection of the Collateral, such as the fees and expenses of auctioneers, brokers and collection agents.

"Recovery Proceeds" shall mean the difference between (a) proceeds received from the foreclosure upon, the liquidation of, or the exercise of any other rights or remedies, with respect to the Collateral and the exercise of any other rights and remedies with respect to any assets of a Borrower or a Guarantor or any other source of payment and (b) the sum of the Collateral Protection Costs, the Enforcement Costs and Realization Costs to the extent not reimbursed by a Borrower, any Guarantor or any other Person.

"Renewal" shall mean, with respect to a Revolving Loan Facility, the agreement of Lender to continue the Loan Facility beyond the Loan Facility Term (not an Extension) whether or not upon the same terms and conditions as the existing Loan Facility.

"Retainage" shall mean that portion of the purchase price of an Export Order that a Buyer is not obligated to pay until the end of a specified period of time following the satisfactory performance under such Export Order.

"Retainage Accounts Receivable" shall mean, with respect to a Borrower, those portions of Eligible Export-Related Accounts Receivable arising out of a Retainage.

"Retainage Advance Rate" shall mean, with respect to a Loan Facility, the percentage rate specified in Section 5(C)(3) of the Loan Authorization Agreement as the Advance Rate for the Retainage Accounts Receivable of a Borrower.

"Retainage Value" shall mean, with respect to a Loan Facility, at the date of determination thereof, the aggregate face amount of Retainage Accounts Receivable, less taxes, discounts, credits and allowances, except to the extent otherwise permitted by Ex-Im Bank in writing.

"Revolving Loan Facility" shall mean a credit facility or a portion thereof established by Lender in favor of a Borrower for the purpose of providing pre-export working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations may be made and repaid on a continuous basis based solely on the Export-Related Borrowing Base during the term of such credit facility.

"Secondary Collateral" shall mean, with respect to a Loan Facility, all assets of a Borrower, other than the Primary Collateral, in which Lender is granted a Lien to secure any financial accommodations (other than the Loan Facility Obligations) provided by Lender to Borrower.

"Special Conditions" shall mean those conditions, if any, set forth in Section 13 of the Loan Authorization Agreement.

"Specific Export Orders" shall mean those Export Orders specified in Section 5(D) of the Loan Authorization Agreement.

"Standby Letter of Credit" shall mean those letters of credit subject to the ISP or UCP issued or caused to be issued by Lender under a Loan Facility for a Borrower's account that can be drawn upon by a Buyer only if such Borrower fails to perform all of its obligations with respect to an Export Order.

"Transaction Specific Loan Facility" shall mean a credit facility or a portion thereof established by Lender in favor of a Borrower for the purpose of providing pre-export working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations are made based solely on the Export-Related Borrowing Base relating to Specific Export Orders and once such Credit Accommodations are repaid they may not be reborrowed.

"Transaction Specific Revolving Loan Facility" shall mean a Revolving Credit Facility established to provide financing of Specific Export Orders.

"UCC" shall mean the Uniform Commercial Code as the same may be in effect from time to time in the jurisdiction in which the applicable Borrower or Collateral is located.

"UCP" shall mean the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and any amendments and revisions thereof.

"U.S." or "United States" shall mean the United States of America and its territorial possessions.

"Warranty" shall mean a Borrower's guarantee to a Buyer that the Items will function as intended during the warranty period set forth in the applicable Export Order.

"Warranty Letter of Credit" shall mean a Standby Letter of Credit which is issued or caused to be issued by Lender to support the obligations of a Borrower with respect to a Warranty or a Standby Letter of Credit which by its terms becomes a Warranty Letter of Credit.

1.02 Rules of Construction. For purposes of this Agreement, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (b) the term "or" is not exclusive; (c) the term "including" (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (e) the words "this Agreement", "herein", "hereof", "hereunder" or other words of similar import refer to this Agreement as a whole including the schedules, exhibits, and annexes hereto, as the same may be amended, modified or supplemented; (f) all references in this Agreement to sections, schedules, exhibits, and annexes shall refer to the corresponding sections, schedules, exhibits, and annexes of or to this Agreement; and (g) all references to any instruments or agreements, including references to any of the Loan Documents or the Delegated Authority Letter Agreement shall include any and all modifications, amendments and supplements thereto and any and all extensions or renewals thereof to the extent permitted under this Agreement.

1.03 Incorporation of Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

## **ARTICLE II. THE GUARANTEE**

2.01 The Guarantee. Subject to the terms of this Agreement, if a Borrower fails to pay when due any outstanding amount of principal or accrued interest payable with respect to the Loan Facility Obligations, and such failure continues for more than thirty (30) consecutive calendar days, Ex-Im Bank guarantees (the "Guarantee") the payment of and shall pay to Lender in Dollars an amount equal to ninety percent (90%) of the Guaranteed Amount.

2.02 Continued Effectiveness upon Rescission of Payment. The Guarantee shall continue to be effective or be reinstated, as the case may be, with respect to ninety percent (90%) of any payment, or any part thereof, of principal or interest (at the Guaranteed Interest Rate) on any Disbursement which is rescinded or must otherwise be returned by Lender; provided, that such rescission or return of payment has been compelled by law as the result of the bankruptcy or insolvency of the applicable Borrower, or as a result of any law, regulation or decree applicable to such Borrower or Lender now or hereinafter in effect.

### **ARTICLE III. FACILITY FEE**

3.01 Calculation and Payment of Facility Fee. (a) (i) For each Loan Facility with a Loan Facility Term of twelve (12) months or less Lender shall pay to Ex-Im Bank on the Effective Date, a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage, and (z) a fraction, the numerator of which is the greater of six (6) and the number of months or a portion thereof in the Loan Facility Term, and the denominator of which is twelve (12).

(ii) For each Loan Facility (other than a Transaction Specific Loan Facility or a Transaction Specific Revolving Loan Facility) with a Loan Facility Term of more than twelve (12) months, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the Effective Date and on each Loan Facility Anniversary Date a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage, and (z) a fraction, the numerator of which is the number of months or a portion thereof remaining in the Loan Facility Term (not to exceed twelve (12) months), and the denominator of which is twelve (12).

(iii) For each Transaction Specific Loan Facility and each Transaction Specific Revolving Loan Facility with a Loan Facility Term of more than twelve (12) months, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the Effective Date a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage, and (z) a fraction, the numerator of which is the number of months in the Loan Facility Term, and the denominator of which is twelve (12).

(iv) Upon each Extension of a Loan Facility Term, Lender shall pay to Ex-Im Bank within ten (10) Business Days of the effective date of such Extension, a Facility Fee in an amount equal to the product of (x) the Maximum Amount, (y) the Annual Facility Fee Percentage, and (z) a fraction the numerator of which is the number of days in such Extension and the denominator of which is three hundred and sixty (360).

(v) Lender shall submit, with each Facility Fee payment made on each Loan Facility Anniversary Date and each Extension, a completed Facility Fee Schedule executed on behalf of Lender.

(b) Notwithstanding Subsection 3.01(a), if the criteria set forth in Exhibit 1 and in all amendments, supplements and replacements of such Exhibit delivered to Lender at least ten (10) days prior to the effectiveness thereof (the "Criteria for Reduced Facility Fee") are satisfied, the Annual Facility Fee Percentage shall be reduced to 1.00%; provided, however, if the Loan Facility Term exceeds (12) months or is subject to an Extension, the Criteria For Reduced Facility Fee must be met on each Loan Facility Anniversary Date or the date of such Extension.

(c) Failure of Lender to pay the Facility Fee to Ex-Im Bank within ten (10) Business Days of the Effective Date and, if applicable, each Loan Facility Anniversary Date or the effective date of each Extension shall render the Guarantee with respect to such Loan Facility and the Credit Accommodations made thereunder null and void.

3.02 Method of Payment of Facility Fee. Payment of the Facility Fee shall be made in Dollars either (i) by wire transfer of immediately available funds to the Federal Reserve Bank of New York in New York City for credit to Ex-Im Bank's account at the U.S. Treasury Department as identified below:

U.S. Treasury Department  
021030004  
TREAS NYC/CTR/  
BNF=/AC-4984 OBI=  
EXPORT-IMPORT BANK  
REFERENCE: [Lender Name] [Borrower Name]  
ON EIB GUAR. NO. \_\_\_\_\_  
FROM \_\_\_\_\_ ,

which shall be deemed paid as of the date of receipt of such funds in such account or (ii) by cashier's check sent via U.S. certified mail, return receipt requested, payable to the order of the Export-Import Bank of the United States, which shall be deemed paid as of the date of receipt of such check by Ex-Im Bank's Office of the Treasurer Controller at 811 Vermont Avenue, N.W., Washington, D.C. 20571, U.S.A.

#### **ARTICLE IV. OBLIGATIONS OF LENDER**

So long as this Agreement is in effect and Ex-Im Bank remains liable under the Guarantee, Lender agrees as follows:

4.01 Loan Documents. (a) For each Loan Facility: (i) Lender and Ex-Im Bank shall enter into a Loan Authorization Agreement; (ii) Lender shall have each Borrower execute a Borrower Agreement; and (iii) Lender shall have each Guarantor execute a Guaranty Agreement.

(b) Each Loan Facility shall be established pursuant to a Loan Agreement.

(c) Each of the Loan Documents shall be assignable to Ex-Im Bank, shall be governed by the laws of a state, territory or commonwealth within the United States and shall not contain any binding alternative dispute resolution provisions.

(d) Lender shall include a provision in the applicable Loan Documents requiring that each Borrower and each Guarantor deliver the financial statements described in Section 11 of the applicable Loan Authorization Agreement.

(e) Lender shall provide Borrower with a copy of the applicable Loan Authorization Agreement.

4.02 Security Interests. (a) As of the applicable Effective Date, Lender shall (i) obtain from the applicable Borrower a valid and enforceable agreement pursuant to which such Borrower grants to Lender a valid and enforceable Lien in the Collateral and (ii) take such actions as is required to perfect Lender's Liens in the Collateral under the laws of the United States, except to the extent otherwise set forth in the Loan Authorization Agreement, including the filing in the appropriate jurisdictions of UCC financing statements identifying the applicable Borrower, Guarantor or third party and describing the Collateral. Promptly after the Effective Date, Lender shall confirm by a search of the appropriate jurisdictions that Lender has obtained a perfected first priority Lien in the Collateral subject only to Permitted Liens. Lender shall take such steps as are necessary to maintain a valid, enforceable and perfected first priority Lien in the Collateral subject only to Permitted Liens including the timely filing of continuation statements with respect to such UCC financing statements and the filing of additional UCC financing statements if Lender has actual knowledge that a Borrower, a Guarantor or a third party has moved the Collateral or otherwise has taken any action that would require Lender to take additional action to maintain its perfected first priority Lien in the Collateral subject only to Permitted Liens. If in connection with any loan or other credit accommodation to be provided by Lender to a Borrower, Lender receives a Lien on any assets other than the Primary Collateral to secure such loans and other credit accommodations, the Lien on such assets shall also secure the Loan Facility Obligations. Notwithstanding the foregoing, if any Lien on any Secondary Collateral or any Guarantor Collateral is not intended to be a first Lien, all references herein to a first priority Lien with respect to such Secondary Collateral or Guarantor Collateral shall be to a Lien in the priority set forth in Sections 6(E) and (F) respectively, of the applicable Loan Authorization Agreement.

(b) In the event that a creditor of a Borrower other than Lender has a Lien on any of the Collateral which would take priority over the Lien of Lender in any of the Collateral, Lender shall enter into a valid and enforceable Intercreditor Agreement with such creditor so that the Lien of Lender in such Collateral shall have the priority required and set forth in Section 6 of the Loan Authorization Agreement.

(c) Lender shall not obtain from any Borrower, any Guarantor or any other Person, a Lien on any asset not included in the Collateral which would separately secure the portion of the Loan Facility not guaranteed by Ex-Im Bank.

4.03 Management. Lender will manage, perform and enforce the terms of the Loan Documents and exercise and enforce all privileges and rights exercisable or enforceable by Lender thereunder, for the joint benefit of Lender and Ex-Im Bank, according to Lender's discretion and the exercise of its business judgment. Lender shall exercise the same care in the making, servicing and collection of the Credit Accommodations and the realization upon the Collateral and in the carrying out of the terms and conditions of the Loan Documents, this Agreement and the Loan Authorization Agreement as Lender exercises with respect to similar loans and obligations held by Lender for Lender's own account and risk. Absent the filing of a Claim, Lender shall apply the proceeds of the Primary Collateral received by Lender to reduce the Loan Facility Obligations and Lender may, subject to the terms of this Agreement, the Loan Authorization Agreement and the Loan Documents, continue to make Credit Accommodations

available to the applicable Borrower. Subject to the terms of Article V of this Agreement, upon the occurrence of a default by Borrower under the Loan Documents, Lender may take any action it is entitled to take under the Loan Documents or by law for the protection or realization of the Collateral or for the repayment of the Loan Facility Obligations or the enforcement of the Loan Documents or of any Guaranty Agreements.

4.04 Country Limitation Schedule. Lender shall send a copy of each updated Country Limitation Schedule to each Borrower within ten (10) Business Days after receiving such updated Country Limitation Schedule from Ex-Im Bank. Until an updated Country Limitation Schedule is received by Lender, Lender shall be entitled to rely on the Country Limitation Schedule previously delivered to Lender.

4.05 Special Conditions. Lender may make Credit Accommodations to a Borrower on the Effective Date only if all of the Special Conditions that were to be satisfied on or prior to the Effective Date have been satisfied on or prior to the Effective Date and Lender may make Credit Accommodations to a Borrower after the Effective Date only if all of the Special Conditions that were to be satisfied on and after the Effective Date continue to be satisfied as of the date of the Credit Accommodation.

4.06 Credit Accommodations. (a) Lender may make Credit Accommodations to a Borrower only if it has received an Export-Related Borrowing Base Certificate from such Borrower as frequently as Lender customarily requires from its borrowers but at least within the past thirty (30) calendar days and a copy of the Export Order(s) (or, for a Revolving Loan Facility, a written summary of the Export Orders) against which such Borrower is requesting a Credit Accommodation. Without limiting Lender's Obligations hereunder, including its obligation to perform field examinations, Lender may rely upon the Export-Related Borrowing Base Certificates in determining the Export-Related Borrowing Base unless it has actual knowledge that the Export-Related Borrowing Base Certificate is incorrect or contains a material fraudulent representation.

(b) Lender shall not at any time provide a Credit Accommodation to a Borrower;

(i) after the applicable Final Disbursement Date, except for Disbursements to fund drawings under Letters of Credit outstanding on the Final Disbursement Date made within thirty (30) days after the expiry date of the Letter of Credit related thereto;

(ii) following the occurrence of an Event of Default with respect to the applicable Loan Facility;

(iii) if Lender has actual knowledge that the Credit Accommodation has been or will be used in a manner prohibited by the applicable Borrower Agreement; or

(iv) Lender has actual knowledge that no outstanding Export Orders exist with respect to such Borrower.



In the event Lender makes Credit Accommodations available to a Borrower following the occurrence of any such event, the Guarantee set forth in this Agreement shall be null and void with respect to such Credit Accommodations.

(c) For Revolving Loan Facilities (other than Transaction Specific Revolving Loan Facilities), unless otherwise approved in writing by Ex-Im Bank, if Lender has actual knowledge that the principal balance of the Credit Accommodations to a Borrower that is supported by such Borrower's Export-Related Inventory at any time exceeds sixty percent (60%) of the sum of the outstanding principal balance of the Disbursements and the undrawn face amount of all outstanding Commercial Letters of Credit, Lender shall promptly make written demand on such Borrower to either (i) furnish additional non-Inventory Collateral to Lender, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay down a portion of the applicable Credit Accommodations so that the above described ratio is not exceeded.

(d) Except for Permitted Overadvances, if Lender has actual knowledge that the applicable Export-Related Borrowing Base is at any time less than the applicable Credit Accommodation Amount, Lender shall promptly make written demand on the applicable Borrower to either (i) furnish additional Collateral to Lender as security for the Loan Facility Obligations, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay to Lender an amount equal to the difference between the Credit Accommodation Amount and the Export-Related Borrowing Base with respect to such Borrower.

(e) For purposes of this Agreement, Lender shall in determining the Export-Related Borrowing Base reserve from the Export-Related Borrowing Base the amounts required by Section 4.11 with respect to Letters of Credit and Section 4.12 with respect to Warranty Letters of Credit.

4.07 Loan Records. Lender shall maintain accurate records of (a) each Credit Accommodation, (b) each payment of principal and interest made by each Borrower for credit to such Borrower's Loan Facility, and (c) all accrued interest with respect to the Loan Facility. Lender shall permit the representatives of Ex-Im Bank upon prior notice to Lender during normal business hours to inspect its records with respect to matters relating to the Loan Facility, this Agreement or other loans or financial accommodations provided by Lender to a Borrower, and shall direct its officers and employees to give their full cooperation and assistance in connection therewith. Lender shall, from time to time, at the request of Ex-Im Bank, furnish to Ex-Im Bank such information as Lender may have or be able to obtain with respect to the Loan Documents and/or the financial condition of a Borrower.

4.08 Inspections and Reviews. (a) If (i) the Maximum Amount of a Loan Facility is \$1,000,000 or more or (ii) the Maximum Amount is less than \$1,000,000 but Lender has other loans and financial accommodations to such Borrower for which it performs (or contracts to perform) field examinations, Lender shall conduct a field examination (performed by Lender, an independent certified public accountant or another appropriate entity acceptable to Lender) of such Borrower in accordance with Lender's customary procedures but in no event less than once every six (6) months for the purposes of determining the value of the Collateral against which

Credit Accommodations may be provided, whether the Credit Accommodation Amount exceeds the Export-Related Borrowing Base and whether such Borrower is in material compliance with the terms of the Borrower Agreement and the Loan Authorization Agreement. Such field examination shall include an inspection and valuation of the Inventory and any Other Assets, a book audit of Accounts Receivable and a review of the Accounts Receivable aging report.

(b) For Revolving Loan Facilities, if Lender elects to make Credit Accommodations based upon summaries of Export Orders, then at least once each quarter, Lender shall review a sampling selected by Lender of those Export Orders representing at least ten percent (10%) of the aggregate Dollar volume of Export Orders and ten percent (10%) of the number of Export Orders supporting Credit Accommodations made during the past quarter.

(c) For any Loan Facility with an approved Loan Facility Term of greater than twelve (12) months, Lender shall perform an annual review of the Loan Facility and shall promptly after such review submit to Ex-Im Bank the written results thereof.

4.09 Events of Default. The occurrence of any of the following events with respect to a Borrower or a Guarantor shall constitute an "Event of Default" with respect to the applicable Loan Facility:

(a) such Borrower fails to pay within thirty (30) calendar days of the date when due any amount payable under the Loan Documents;

(b) such Borrower or such Guarantor fails to pay within thirty (30) calendar days of the date when due any amount payable to Lender under any loan(s) or other financial accommodations not guaranteed by Ex-Im Bank that have been extended by Lender to such Borrower or such Guarantor;

(c) except for Permitted Overadvances, the Credit Accommodation Amount exceeds the Export-Related Borrowing Base and such Borrower fails within thirty (30) calendar days after being informed thereof by Lender either to (i) furnish additional Collateral to Lender as security for the Loan Facility, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay to Lender an amount equal to the difference between the Credit Accommodation Amount and the Export-Related Borrowing Base;

(d) such Borrower or such Guarantor (i) applies for, consents to or suffers the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property or calls a meeting of its creditors, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesces to, or fails to have dismissed within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) takes any action for the purpose of effecting any of the foregoing;

(e) any Lien in any of the Collateral, granted or intended by the Loan Documents to be granted to Lender, ceases to be a valid, enforceable, perfected, first priority Lien (or a lesser priority if expressly permitted pursuant to Section 6 of the Loan Authorization Agreement) subject only to Permitted Liens;

(f) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms;

(g) the issuance of any levy, assessment, attachment, seizure or Lien, other than a Permitted Lien, against any of the Collateral which is not stayed or lifted within thirty (30) calendar days;

(h) any proceeding is commenced by or against such Borrower or such Guarantor for the liquidation of its assets or dissolution;

(i) such Borrower fails to comply with any provision of the applicable Borrower Agreement or Loan Authorization Agreement and such failure is not cured within thirty (30) calendar days after the occurrence of such failure;

(j) any litigation is filed against such Borrower or any Guarantor which has had or could reasonably be expected to have a Material Adverse Effect and such litigation is not withdrawn or dismissed within thirty (30) calendar days of the filing thereof; or

(k) any default or event of default other than those described above occurs under any of the Loan Documents which causes the obligations thereunder or a portion thereof to become due prior to its stated maturity or prior to the regularly scheduled dates of payment.

If directed to do so by Ex-Im Bank in writing following the occurrence of an Event of Default, Lender shall, subject to the terms of the Loan Documents, accelerate the maturity of the Loan Facility Obligations against the applicable Borrower and any Guarantors.

4.10 Notice of Events. (a) Lender shall notify Ex-Im Bank in writing within five (5) Business Days if it has knowledge of any Event of Default or the occurrence of any of the following events with respect to any Loan Facility:

(i) any default or event of default under the applicable Loan Documents;

(ii) any default or event of default under any loan(s), financial accommodations or credit facilities not guaranteed by Ex-Im Bank that have been extended or established by Lender in favor of such Borrower or such Guarantor;

(iii) any restructuring, arising from material adverse developments in Borrower's financial condition or prospects, of any loan(s), financial accommodations or credit facilities not guaranteed by Ex-Im Bank that have been extended or established by Lender in favor of such Borrower or such Guarantor;

(iv) any event which has had or could reasonably be expected to have a Material Adverse Effect;

(v) such Borrower has included in the applicable Export-Related Borrowing Base, Inventory which is not Eligible Export-Related Inventory or Accounts Receivable which are not Eligible Export-Related Accounts Receivable;

(vi) Lender downgrades the internal credit rating provided to such Loan Facility or such Borrower by Lender;

(vii) Lender receives a notice from such Borrower that it has not complied with any of the terms of the Borrower Agreement or Lender otherwise has actual knowledge that such Borrower has not complied with any of the terms of the Borrower Agreement; or

(viii) any event described in Section 4.06(b) of this Agreement.

(b) For Revolving Loan Facilities, Lender shall notify Ex-Im Bank within five (5) Business Days of its determination not to enter into a Renewal of the Loan Facility.

(c) In the event that Lender is required to send to Ex-Im Bank a notice required by (a) above, Lender shall also send to Ex-Im Bank not less than once every thirty (30) calendar days thereafter a written report on the status of the event(s) covered by such notice. Lender shall continue to provide Ex-Im Bank with such periodic status reports until Lender files a Claim pursuant to this Agreement, the applicable event(s) have been cured to the satisfaction of Ex-Im Bank or the applicable event(s) have been waived by Lender with the consent of Ex-Im Bank; provided that with respect to any default occurring under the Loan Documents which is not otherwise an Event of Default, Lender may waive such default without Ex-Im Bank's consent provided that Lender sends written notice of such waiver within five (5) Business Days to Ex-Im Bank.

4.11 Letters of Credit. (a) Subject to the terms and conditions set forth in this Agreement, Lender may issue or cause the issuance of Commercial Letters of Credit and Standby Letters of Credit other than Warranty Letters of Credit; provided, that Lender reserves from the applicable Export-Related Borrowing Base an amount equal to at least twenty-five percent (25%) of the outstanding face amount of such Commercial Letters of Credit and Standby Letters of Credit. Warranty Letters of Credit shall not be issued except in accordance with Section 4.12.

(b) Letters of Credit may be issued by Lender at any time on or before the Final Disbursement Date; provided that (i) the length of the term of any Letter of Credit shall not be more than the shorter of (x) twelve (12) months from the date of issuance of the Letter of Credit and (y) the length of the Loan Facility Term (i.e. for a Loan Facility having a Term of six (6) months, no Letter of Credit shall have an expiry date later than six (6) months from the date of issuance) and (ii) in the case of a Revolving Loan Facility, Lender may not issue during the last sixty (60) days of the Loan Facility Term any Letter of Credit which will expire after the

Final Disbursement Date unless Lender either has determined to enter into a Renewal of the Loan Facility or has obtained the prior written approval of Ex-Im Bank.

4.12 Warranty Letters of Credit. Subject to the terms and conditions of this Agreement, Lender may only issue or cause the issuance of Warranty Letters of Credit with the prior written consent of Ex-Im Bank. In no event will Ex-Im Bank approve the issuance of any Warranty Letter of Credit and no Warranty Letter of Credit may be issued by Lender unless:

(a) except for the Letter of Credit being a Warranty Letter of Credit, the Letter of Credit otherwise complies with the terms and conditions set forth in Section 4.11(b);

(b) Lender provides financial accommodations to the applicable Borrower that are not guaranteed by Ex-Im Bank;

(c) Lender shall have received cash collateral to secure each Borrower's Letter of Credit Obligations with respect to each Warranty Letter of Credit in an amount equal to at least twenty-five percent (25%) of the face amount of the Warranty Letter of Credit;

(d) Lender shall have reserved from such Borrower's Export-Related Borrowing Base an amount such that the sum of such reserve and the cash collateral securing such Warranty Letter of Credit is at least equal to one hundred percent (100%) of the face amount of each Warranty Letter of Credit;

(e) the sum of (i) the portion of the Credit Accommodations to such Borrower supporting Warranty Letters of Credit and (ii) the Retainage Value of the Retainage Accounts Receivable included in the Export-Related Borrowing Base of such Borrower in accordance with Section 4.13, shall not exceed the lesser of (x) twenty percent (20%) of the Maximum Amount or (y) \$500,000.

4.13 Retainages. Subject to the terms and conditions of this Agreement, Lender may only include Retainage Accounts Receivable in the Export-Related Borrowing Base with the prior written consent of Ex-Im Bank. In no event will Ex-Im Bank approve the inclusion of Retainage Accounts Receivable, and no Retainage Accounts Receivable may be included in the Export-Related Borrowing Base unless:

(a) the applicable Borrower has invoiced the Buyer for the Retainage Account Receivable;

(b) the Retainage Account Receivable is an Eligible Export-Related Account Receivable;

(c) the Retainage Advance Rate does not exceed twenty-five percent (25%);  
and

(d) the sum of (i) the portion of the Credit Accommodations to such Borrower supporting Warranty Letters of Credit and (ii) the Retainage Value of the Retainage Accounts

Receivable included in the Export-Related Borrowing Base of such Borrower in accordance with this Section 4.13, shall not exceed the lesser of (x) twenty percent 20% of the Maximum Amount or (y) \$500,000.

4.14 Assignability. Lender may assign, transfer, negotiate, sell or participate all or part of its interests, obligations or rights in a Loan Facility and the applicable Loan Documents to an affiliate or subsidiary of Lender or to any other financial institution provided that Lender continues to act as the administrative and collateral agent for such Loan Facility and Lender retains all obligations with respect to Ex-Im Bank under the Guarantee, this Agreement, the Loan Authorization Agreement and, to the extent applicable, the Delegated Authority Letter Agreement. Except as set forth in the preceding sentence, Lender shall not assign, transfer, negotiate, sell or participate any of its interests, obligations or rights in any Loan Facility, the applicable Loan Documents or this Agreement without prior written consent of Ex-Im Bank.

4.15 Amendments, Legal Action. (a) With respect to each Borrower, Lender shall not without the prior written consent of Ex-Im Bank amend any Loan Document in so far as it relates to the Loan Facility, release any Collateral applicable to a Loan Facility, release any Guarantor from its obligations, reschedule or restructure the applicable Loan Facility, or undertake any legal action with respect to any of the Loan Documents, including accelerating the applicable Loan Facility (except for the automatic acceleration of the Loan Facility arising as a result of the filing of a proceeding in bankruptcy by or against the applicable Borrower) or exercising any of its remedies under the Loan Documents or applicable law; provided, however in situations following an Event of Default when Lender determines, in good faith, that time is of the essence and it is not practical to obtain Ex-Im Bank's prior written consent, Lender may take such actions required in its reasonable judgment to protect the physical security or market value of the Collateral and any materials or records relating thereto or to preserve the collection prospects of the Loan Facility or Collateral, provided, that, Lender notifies Ex-Im Bank within five (5) Business Days of Lender's taking such action. Additionally, if Ex-Im Bank has not responded to Lender's written request to accelerate the applicable Loan Facility within five (5) Business Days of Ex-Im Bank's receipt of such request, Ex-Im Bank shall be deemed to have given its consent.

(b) Notwithstanding anything to the contrary in this Agreement, Lender may make Permitted Overadvances, and any such Permitted Overadvance (including interest accrued thereon) shall be covered by the Guarantee.

(c) Lender shall take such measures as are reasonably requested by Ex-Im Bank to cooperate with Ex-Im Bank in recovery efforts against each applicable Borrower, any Guarantors and the applicable Collateral.

## **ARTICLE V. CLAIMS PROCEDURES**

5.01 Conditions Precedent to Payment. Lender shall submit the following to Ex-Im Bank as conditions precedent to Ex-Im Bank's obligation to make a payment to Lender under the Guarantee with respect to a particular Loan Facility (the "Claim Conditions"):

(a) written demand on Ex-Im Bank by Lender for payment under the Guarantee delivered to Ex-Im Bank on a Business Day not sooner than thirty (30) calendar days nor later than one hundred twenty (120) calendar days from the date of the applicable Borrower's failure to pay any amount due with respect to such Loan Facility, which written demand shall state (i) the total principal balance of the Disbursements and other Credit Accommodations outstanding, (ii) the amount of past due interest on the Loan Facility, (iii) the current Guaranteed Interest Rate, (iv) the last date on which an interest payment was made with respect to the Loan Facility, and (v) the amount and calculation of the Collateral Protection Costs and the Enforcement Costs of Lender as of the Claim Date;

(b) a copy of the written demand made by Lender on the applicable Borrower and any Guarantors for payment of all amounts due and payable with respect to such Loan Facility, except to the extent that the making of such demand would be prohibited by the automatic stay imposed pursuant to 11 U.S.C. § 362(a) in a bankruptcy proceeding of such Borrower or Guarantor and Lender shall have no obligation to apply for relief from such stay;

(c) duplicate originals or photocopies of fully executed copies of the Loan Authorization Agreement and all Loan Documents with respect to such Loan Facility;

(d) copies of all UCC financing statements covering the Collateral for such Loan Facility filed by or on behalf of Lender and evidence that Lender has conducted or obtained, after the filing of the UCC financing statements, a lien search of the appropriate jurisdictions which indicates that Lender has a perfected security interest in the applicable Collateral subject only to Permitted Liens in the priority set forth in Section 6 of the applicable Loan Authorization Agreement;

(e) fully executed copies of any Intercreditor Agreement

(f) evidence that Lender has paid the applicable Facility Fee to Ex-Im Bank within ten (10) Business Days of the applicable Effective Date and, if applicable, within ten (10) Business Days of each Loan Facility Anniversary Date, the effective date of any Renewal, or Extension;

(g) evidence that Lender has complied in all material respects with all of its obligations under the Loan Authorization Agreement, including, all Special Conditions, if any;

(h) copies of all field examination reports conducted in the twelve (12) month period preceding the filing of a Claim relating to the applicable Collateral as required in Section 4.08 of this Agreement;

(i) copies of the last three (3) sets received by Lender of the Inventory schedules and Accounts Receivable aging reports required to be delivered pursuant to the applicable Borrower Agreement;

(j) copies of all applicable Export-Related Borrowing Base Certificates for the shorter of (i) the Loan Facility Term and (ii) the six month period preceding the filing of a Claim;

(k) copies of all Export Orders or summaries of Export Orders, as applicable ;

(l) copies of Lender's records regarding Credit Accommodations and application of payments to the Loan Facility; and

(m) copies of any other documents, records, correspondence or items in Lender's possession related to the Loan Facility, the Loan Documents, or the obligations of Lender under this Agreement, as reasonably requested by Ex-Im Bank.

5.02 Disposition of Claims. Ex-Im Bank reserves the right to deny a Claim or any portion thereof if Ex-Im Bank determines that Lender has not complied with or otherwise satisfied in all material respects all of the Claim Conditions or Lender has not complied in all material respects with all of the Lender Obligations.

5.03 Payment of Claims. (a) Within thirty (30) calendar days of receipt by Ex-Im Bank of all Claim Conditions, Ex-Im Bank shall notify Lender whether Ex-Im Bank is prepared to pay the applicable Claim or any portion thereof under the Guarantee (the "Claim Disposition Notice"). In the event Ex-Im Bank denies the payment of a Claim or a portion thereof, Ex-Im Bank shall state the reasons for such denial in the Claim Disposition Notice.

(b) If the Claim Disposition Notice states that Ex-Im Bank will not pay a Claim or any portion thereof because Lender has failed to obtain a perfected Lien in any portion of the Collateral in the priority set forth in this Agreement and the applicable Loan Authorization Agreement, then Ex-Im Bank may still make a Claim Payment to Lender after the completion of all recovery efforts against the Collateral. Upon completion of such recovery efforts, Ex-Im Bank may pay any unpaid portion of the Claim to Lender, deducting therefrom an amount equal to the non-recoverable value, as determined by Ex-Im Bank in its sole discretion exercised in good faith, attributable to the portion of the Collateral in which Lender failed to obtain the required perfected Lien. Such determination shall, without limitation, take into account the relative priority Lender and Ex-Im Bank were to have in the proceeds of the Collateral in which Lender did not have the required perfected Lien and, if their respective interests in the proceeds of such Collateral are of equal priority the relative ultimate net loss suffered by each.

(c) If the Claim Disposition Notice states that Ex-Im Bank will not pay a Claim or a portion thereof because Lender has failed to satisfy the Lender Obligations in all material respects, then Ex-Im Bank may still make a Claim Payment to Lender after the completion of all recovery efforts against the applicable Borrower, any Guarantor and the Collateral. Upon completion of such recovery efforts, Ex-Im Bank may pay any unpaid portion of the Claim to Lender, deducting therefrom an amount equal to the non-recoverable value, as determined by Ex-Im Bank in its sole discretion exercised in good faith, attributable to such exceptions(s) or non compliance.



(d) In connection with any of the events described in Sections 5.03(b) and (c), Ex-Im Bank shall have no obligation to commence or conduct any recovery efforts against any Borrower, any Guarantor or any Collateral.

(e) Unless the Export-Related Inventory of a Borrower can be effectively segregated from other Inventory of such Borrower, for purposes of claim recoveries under this Agreement, the amount of Export-Related Inventory will be determined on a Pro Rata Inventory Basis as of the date Lender obtains knowledge of the occurrence of the Event of Default that has led to the filing of the Claim.

5.04 Assignment. (a) Prior to any Claim Payment, Lender shall, if requested by Ex-Im Bank, execute and deliver to Ex-Im Bank an Assignment Agreement pursuant to which Lender assigns all of its right, title and interest in and to: (i) the portion of the Loan Documents relating to the Loan Facility Obligations; (ii) the Primary Collateral; and (iii) the portion of all other instruments, documents, items and property related to the applicable Loan Facility Obligations. Lender shall deliver to Ex-Im Bank together with such Assignment Agreement, such other instruments and documents as Ex-Im Bank shall reasonably request together with appropriate endorsements thereto.

(b) Ex-Im Bank shall not be entitled to request an Assignment Agreement with respect to a Loan Facility if at the time of such request the ratio of (i) the outstanding principal balance of the loans and other financial accommodations provided to such Borrower by Lender secured by the Collateral other than the Loan Facility Obligations to (ii) the outstanding principal balance of the Loan Facility Obligations is equal or greater than 1.0 to 1.0.

5.05 Liquidation by Lender. At all times prior to a Claim Payment and at all times thereafter until an Assignment Agreement, if any, is delivered, Lender shall enforce the Loan Documents and liquidate the Collateral for the joint benefit of Lender and Ex-Im Bank, subject to the priorities and the standard of care contemplated by this Agreement, any Loan Authorization Agreement, and any and all other agreements pertaining hereto or thereto.

5.06 Application of Recovery Proceeds. (a) The Recovery Proceeds from the Primary Collateral received by either Ex-Im Bank or Lender shall be applied as follows:

(i) ninety percent (90%) to Ex-Im Bank up to an amount equal to the amount of the Claim Payment; and

(ii) ten percent (10%) to Lender up to an amount equal to the lesser of (x) the unpaid balance of the Loan Facility Obligations and (y) the difference between the amount of the Claim and the amount of the Claim Payment.

(b) The Recovery Proceeds from the Secondary Collateral remaining after payment in full of all of Borrower's obligations to Lender secured by the Collateral (other than the Loan Facility Obligations) shall be applied as follows:

(i) ninety percent (90%) to Ex-Im Bank up to an amount equal to the amount of the Claim Payment; and

(ii) ten percent (10%) to Lender up to an amount equal to the lesser of (x) the unpaid balance of the Loan Facility Obligations and (y) the difference between the amount of the Claim and the amount of the Claim Payment.

(c) The Recovery Proceeds from the Guarantor Collateral shall be applied on a Pro Rata Guaranty Basis to the unpaid balance of the Loan Facility Obligations and all other obligations of Borrower and Guarantor to Lender. The amounts received with respect to the Loan Facility Obligations shall be applied as follows:

(i) ninety percent (90%) to Ex-Im Bank up to an amount equal to the amount of the Claim Payment; and

(ii) ten percent (10%) to Lender up to an amount equal to the lesser of (x) the unpaid balance of the Loan Facility Obligations and (y) the difference between the amount of the Claim and the amount of the Claim Payment.

Any amounts received with respect to other obligations due Lender after payment in full of all of Borrower's obligations to Lender secured by the Guarantor Collateral (other than the Loan Facility Obligations) shall be applied as follows:

(i) ninety percent (90%) to Ex-Im Bank up to an amount equal to the amount of the Claim Payment; and

(ii) ten percent (10%) to Lender up to an amount equal to the lesser of (x) the unpaid balance of the Loan Facility Obligations and (y) the difference between the amount of the Claim and the amount of the Claim Payment.

(d) Any Recovery Proceeds received by Ex-Im Bank in excess of the amount of the Claim Payment shall, subject to applicable law, be remitted to Lender for application to any other obligations of such Borrower or Guarantor to Lender that are secured by the Collateral.

5.07 Payments. If either Ex-Im Bank or Lender (a "Benefited Party") shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of banker's lien, set-off or counterclaim) on account of the Loan Facility Obligations in excess of the amounts it would be entitled to receive hereunder, such Benefited Party shall provide the other party with such amounts so as to share the excess payment in the manner set forth in this Agreement; provided, however, if such excess payment is thereafter recovered from such Benefited Party such excess amounts shall be returned to the Benefited Party by the other party.

## **ARTICLE VI. MISCELLANEOUS**

6.01 Governing Law. This Agreement and the Loan Authorization Agreement and the obligations arising under this Agreement and the Loan Authorization Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America, applicable to contracts made and performed in such State, without regard to the principles thereof regarding conflicts of laws.

6.02 Notices. Any notice or request hereunder shall be in writing and shall be addressed to the appropriate party at the address or facsimile number set forth under such party's name on the signature page hereof or at such other address or facsimile number as may hereafter be specified in a notice designated as a notice of change of address or facsimile number under this Agreement. Any notice or request hereunder which relates exclusively to a specific Loan Facility shall include the Ex-Im Bank guarantee loan number. Any notice or request hereunder shall be deemed validly given or delivered (a) when hand delivered to an officer of the party to whom it was addressed, (b) upon the earlier of actual receipt thereof or three (3) days after deposit in the United States Mail, certified or registered mail, return receipt requested, with proper postage prepaid, (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid, or (d) upon transmission when sent by telecopier or other facsimile transmission with such telecopy or facsimile promptly confirmed by delivery or a copy by personal delivery, United States Mail or overnight courier as provided in this Section 6.02.

6.03 Termination. This Agreement shall continue in full force and effect until terminated by the actual receipt by Lender from Ex-Im Bank of written notice of termination. Such termination shall be applicable only to transactions having their inception after such termination and rights and obligations arising out of transactions having their inception prior to such termination shall not be affected.

6.04 Modification of Agreement. This Agreement, the Loan Authorization Agreement, the Loan Documents and, to the extent applicable, the Delegated Authority Letter Agreement constitute the complete agreement between the parties with respect to the subject matter hereof and thereof, supersede all prior agreements, commitments, understandings or inducements (oral or written, expressed or implied). This Agreement may not be modified, altered or amended except by a written agreement signed by Ex-Im Bank and Lender.

6.05 No Waiver. Neither Ex-Im Bank's failure, at any time or times, to require strict performance by Lender of any provision of this Agreement, nor Ex-Im Bank's failure to exercise, nor any delay in exercising any right, power or privilege hereunder, (a) shall waive, affect or diminish any right of Ex-Im Bank thereafter to demand strict compliance and performance therewith, or (b) shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege. Any suspension or waiver of a provision under this Agreement or any Loan Documents shall not suspend, waive or affect any other provision under this Agreement or any Loan Document, whether the same is prior or subsequent thereto and

whether of the same or of a different type, and shall not be construed as a bar to any right or remedy which Lender would otherwise have had on any future occasion. None of the undertakings, indemnities, agreements, warranties, covenants and representations of Lender to Ex-Im Bank in this Agreement or any Loan Document shall be deemed to have been suspended or waived by Lender, unless such waiver or suspension is by an instrument in writing signed by an officer or other authorized employee of Ex-Im Bank and directed to specifying such suspension or waiver (and then such suspension or waiver shall be effective only to the extent therein expressly set forth). Ex-Im Bank shall not, by any act (other than execution of a formal written waiver), delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder.

6.06 Partial Invalidity. If at any time any of the provisions of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, the validity nor the enforceability of the remaining provisions hereof shall in any way be affected or impaired.

6.07 Waiver of Jury Trial. EACH OF LENDER AND EX-IM BANK HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OR OMISSIONS OF LENDER, EX-IM BANK OR ANY OTHER PERSON RELATING TO THIS AGREEMENT, THE LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, PROCEEDING OR OTHER LITIGATION BROUGHT TO RESOLVE ANY DISPUTE ARISING UNDER, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, ANY LOAN AUTHORIZATION AGREEMENT OR ANY OTHER AGREEMENT, DOCUMENT OR INSTRUMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THEREWITH.

6.08 Section Titles. The Section titles contained in this Agreement shall be without substantive meaning or content of any kind whatsoever and are not part of the agreement between the parties hereto.

6.09 Counterparts. This Agreement, the Loan Authorization Agreement, the Loan Documents and to the extent applicable the Delegated Authority Letter Agreement may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, in duplicate, as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Name of Lender)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopier: \_\_\_\_\_

EXPORT-IMPORT BANK OF THE UNITED STATES

By: \_\_\_\_\_  
(Signature)

Name: Sam Z. Zytcer

Title: Vice President, United States Division

811 Vermont Avenue, N.W.

Washington, D.C. 20571

Attention: Vice President,  
United States Division

Telephone: (202) 565-3780

Telecopier: (202) 565-3793

**ANNEXES:**

Annex A - Loan Authorization Agreement

Annex B - Borrower Agreement

**EXHIBITS:**

Exhibit 1 - Criteria For Reduced Facility Fee